



Wisconsin Medical Society

Your Doctor. Your Health.

The Injured Patients and Families Compensation Fund

The Injured Patients and Families Compensation Fund (Fund) was created in 1975 for the purpose of paying the portion of medical malpractice claims that exceed the limits of primary medical liability insurance coverage. Wisconsin law requires physicians, hospitals and other health care professionals to have medical liability insurance. Most health care professionals purchase medical liability policies from private insurance carriers that pay claims up to \$1,000,000 for each claim arising from an occurrence in a year or \$3,000,000 for all claims arising from all occurrences in a year.

When the state created the Fund, it was designed to be a comprehensive program that guarantees medical liability insurance coverage for certain health care professionals. The Legislature made the eleven (11) findings in the Laws of 1975 chapter 37, which are set forth below when it created the Fund.

(1) The legislature finds that:

- (a) The number of suits and claims for damages arising from professional patient care has increased tremendously in the past several years and the size of judgments and settlements in connection therewith has increased even more substantially;
- (b) The effect of such judgments and settlements, based frequently on newly emerging legal precedents, has been to, cause the insurance industry to uniformly and substantially increase the cost and limit the availability of professional liability insurance coverage;
- (c) These increased insurance costs are being passed on to patients in the form of higher charges for health care services and facilities;
- (d) The increased costs of providing health care services, the increased incidents of claims and suits against health care providers and the size of such claims and judgments has caused many liability insurance companies to withdraw completely from the insuring of health care providers;
- (e) The rising number of suits and claims is forcing both individual and institutional health care providers to practice defensively, to the detriment of the health care provider and the patient;
- (f) As a result of the current impact of such suits and claims, health care providers are often required, for their own protection, to employ extensive diagnostic procedures for their patients, thereby increasing the cost of patient care;
- (g) As another effect of the increase of such suits and claims and the costs thereof, health care providers are reluctant to and may decline to provide certain health care services which might be helpful, but in themselves entail some risk of patient injury;
- (h) The cost and the difficulty in obtaining insurance for health care providers discourages and has discouraged young physicians from entering into the practice of medicine in this state;
- (i) Inability to obtain, and the high cost of obtaining, such insurance has affected and is likely to further affect medical and hospital services available in this state to the detriment of patients, the public and health care providers;
- (j) Some health care providers have curtailed or ceased, or may further curtail or cease, their practices because of the nonavailability or high cost of professional liability insurance; and
- (k) It therefor[e] appears that the entire effect of such suits and claims is working to the detriment of the health care provider, the patient and the public in general.

The Legislature's findings indicate that Wisconsin was experiencing a health care crisis and the Fund was intended to diminish the crisis and stabilize the medical liability environment by guaranteeing affordable insurance coverage, ensuring that injured patients and their families receive reasonable monetary relief for their injuries and reduce health care costs.

The IPFCF is fully funded by fees assessed against physicians and certain other health care professionals and entities (e.g. hospitals and nurse anesthetists) on an annual basis. Participation in the Fund is mandatory, with a few limited exceptions. Click here for more information about the health care professionals who are required to participate in the Fund and those who are exempt from participation [<http://oci.wi.gov/pcf.htm>]. A thirteen (13) member Board of Governors (Board) manages the Fund. The Board consists of 3 insurance industry representatives, a member named by the Wisconsin Academy of Trial Lawyers, a member named by the State Bar Association, two members named by the State Medical Society of Wisconsin, a member named by the Wisconsin Hospital Association, four public members appointed by the Governor, and the Commissioner of Insurance who serves as the chair. Click [here](#) to see the list of the Fund Board members [<http://oci.wi.gov/pcf.htm>]. The Office of the Commissioner of Insurance provides administrative staff for the Fund's operation. The State of Wisconsin Investment Board manages the Fund's investments.

In the 2003-05 biennial budget the Governor proposed the transfer of \$200 million from the Fund to provide assistance to the state's Medical Assistance program. The Society vigorously opposed the transfer of money from the Fund. The Legislature removed the proposed transfer from the budget and later enacted 2003 Wisconsin Act 111. 2003 Wisconsin Act 111 reinforced the Fund's narrow purpose by changing its name from the Patients Compensation Fund to the Injured Patients and Families Compensation Fund and specifying that the Fund is established to curb the rising costs of health care and ensure that proper claims are satisfied. The purpose and integrity language of 2003 Wisconsin Act 111, set forth in Wis. Stat. § 655.27(6), provides as follows:

(6) PURPOSE AND INTEGRITY OF FUND. The fund is established to curb the rising costs of health care by financing part of the liability incurred by health care providers as a result of medical malpractice claims and to ensure that proper claims are satisfied. The fund, including any net worth of the fund, is held in irrevocable trust for the sole benefit of health care providers participating in the fund and proper claimants. Moneys in the fund may not be used for any other purpose of the state.

In the 2005-07 biennial budget the Governor proposed a transfer of \$179,417,400 from the Fund to satisfy various budgetary shortfalls, despite the clear language of the statute characterizing the Fund as an irrevocable trust. The Legislature's Joint Finance Committee (Committee), in response to the Society's vigorous efforts, averted the second attempt to raid the Fund.

In the 2007-09 biennial budget the Governor proposed a transfer of \$175 million from the Fund to implement various health initiatives that are unrelated to the payment of claims of injured patients and their families. The Legislature approved transfers from the Fund totaling \$200 million. The State transferred \$71.5 million from the Fund on October 29, 2007 and \$128.5 million on July 1, 2008. The Society filed a lawsuit on October 29, 2007 to recover the money transferred from the Fund, restore the Fund's integrity and ensure that the money in the Fund is used for its statutory purpose of paying claims of injured patients and their families.

According to the Legislative Fiscal Bureau's 2009 Report of the Injured Patients and Families Compensation Fund, as of June 30, 2008, the Fund has paid 648 claims for a total of \$699.5 million. In its 2009 report, the Legislative Fiscal Bureau reviewed and analyzed the Fund's annual Statement of Net

Equity. According to the Statement of Net Equity, the Fund's liabilities exceed its assets, creating a \$61,489,600 deficit.

Table 6: Statement of Net Equity as of June 30, 2008

Assets	
	\$84,386,800
Total Current Assets	\$686,685,500
Total Non-Current Assets	\$771,072,300
Total Assets	
Liabilities	
Total Current Liabilities	\$144,730,200
Total Non-Current Liabilities	\$687,831,700
Total Liabilities	\$832,561,900
Total Net Equity	-\$61,489,600

Click [here](#)

[\[http://www.legis.state.wi.us/lfb/Informationalpapers/84_injured%20patients%20and%20families%20compensation%20fund.pdf\]](http://www.legis.state.wi.us/lfb/Informationalpapers/84_injured%20patients%20and%20families%20compensation%20fund.pdf) to read the Legislative Fiscal Bureau's 2009 report. The Fund Board of Governors has proposed a 9.9 percent increase in Fund fees for fiscal year 2009-10. Physicians fear that the Fund's diminished integrity caused by the raid of the Fund, along with the deficit could create the type of medical liability crisis that the Legislature attempted to avert in 1975. The Fund, along with reasonable caps on noneconomic damages, is a critical component in the stability of Wisconsin's medical liability climate. Therefore, it is very important for the appellate courts to restore the Fund's integrity by declaring the Fund raid to be illegal and mandating that the state return the money that it transferred from the Fund along with any interest that would have accrued.